

Ambac Assur. Corp. v Countrywide Home Loans, Inc.
2012 NY Slip Op 02575
Decided on April 5, 2012
Appellate Division, First Department
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Decided on April 5, 2012

Gonzalez, P.J., Tom, Catterson, Renwick, Richter, JJ. 7286N- 7287N- 7288N- 7289N & M-664-M-665-

651612/10 602825/08 650736/09 650042/09 -745

[*1]Ambac Assurance Corp., et al., Plaintiffs-Respondents,

v

Countrywide Home Loans, Inc., et al., Defendants, Bank of America Corp., Defendant-Appellant.

MBIA Insurance Corporation, Plaintiff-Respondent,

v

Countrywide Home Loans, Inc., et al., Defendants, Bank of America Corp., Defendant-Appellant.

Financial Guaranty Insurance Co., Plaintiff-Respondent,

v

Countrywide Home Loans, Inc., et al., Defendants, Bank of America Corp., Defendant-Appellant.

Syncora Guarantee, Inc., Plaintiff-Respondent,

v

Countrywide Home Loans, Inc., et al., Defendants, Bank of America Corp., Defendant-Appellant.

O'Melveny & Myers LLP, New York (Jonathan Rosenberg of counsel), for appellant.

Patterson Belknap Webb & Tyler LLP, New York (Robert P. LoBue of counsel), for Ambac Assurance Corp. and The Segregated Account of Ambac Assurance Corporation, respondents.

Quinn Emanuel Urquhart & Sullivan, LLP, New York (Peter E. Calamari of counsel), for MBIA Insurance Corporation, respondent.

Kutak Rock LLP, New York (Robert A. Jaffe of counsel), for Financial Guaranty Insurance Co., respondent.

Allegaert Berger & Vogel LLP, New York (David A. Berger of counsel), for Syncora Guarantee, Inc., respondent.

Orders, Supreme Court, New York County (Eileen Bransten, J.), entered October 31, 2011 and November 2, 2011, which, among other things, denied defendant Bank of America Corp.'s motions to sever and consolidate plaintiffs' successor liability claims for purposes of discovery, and held in abeyance defendant's motion to consolidate the successor liability claims for purposes of trial, unanimously affirmed, with costs.

This is a consolidated appeal involving four related but separate claims by monoline insurers for primary liability against the Countrywide defendants in connection with financial guarantee insurance covering mortgage-backed securities. The actions also involve successor liability against defendant Bank of America. The court properly exercised its discretion in denying defendant's motion to sever plaintiffs' successor liability claims from the primary claims and to consolidate them, for purposes of discovery, in a single action. The successor liability actions are at completely different stages of discovery, and consolidation would result in undue delay ([see *Barnes v Cathers & Dembrosky*](#),

[5 AD3d 122](#) [2004]).

M-664 -*Syncora Guarantee Inc. v Countrywide Home Loans, Inc., et al. and Bank of America Corp.*

M-665 -*MBIA Insurance Corporation v Countrywide Home Loans, Inc., et al. and Bank of America Corp.*

M-745 -*MBIA Insurance Corporation, et al. v Countrywide Home Loans, Inc., [*2] et al. and Bank of America Corp.*

Motions to supplement the record on appeal (M-664, M-665) granted; cross motion to strike the supplemental record and reply brief, or for leave to supplement the record in the event the motion (M-665) is granted (M-745), granted to the extent of granting leave to supplement the record.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 5, 2012

CLERK

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